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Office Memorandum • UNITED STATES GOVERNMENT

TO : Personnel Director

DATE: 2 February 1953

FROM : Office of the General Counsel

SUBJECT: Salary Adjustments from Retroactive Pay Increases

REFERENCE: Your Memorandum dated 12 January 1953, same subject.

OGC Has Reviewed

1. The reference requests the advice of this office whether procedures for salary adjustments prescribed in the decision of the Comptroller General (B-106337) of November 6, 1951, 31 Comp. Gen. 166, should mandatorily be adhered to by this Agency in making retroactive payments pursuant to the general provisions of Public Law 375 - 82nd Congress.

2. It has been informally ascertained that your inquiry is prompted by the fact that certain adjustments made pursuant to Public Law 375, in cases where promotions occurred during the period of retroactivity, involve overpayments in the light of the cited Comptroller General decision. You further wish to be advised whether it is required that collection of these overpayments be obtained.

3. It is the opinion of this office for the reasons hereafter set forth that retroactive payments not made in conformance with the cited decision are improper and that excessive amounts paid in each case should be recovered.

4. The Director of Central Intelligence was advised by the Comptroller General in Decision B-106516 of November 21, 1951, 31 Comp. Gen. 191.

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Accordingly, this Agency and others were precluded from making retroactive adjustments in salary until the passage of Public Law 375 on June 5, 1952.

5. Public Law 375, as you state, permitted this Agency to pay its employees "pay increases, comparable to those provided by Public Law 201," "on the same basis as if they had been authorized by said law....". We interpret the words "on the same basis" as meaning that retroactive payments could be made in as favorable a manner as under Public Law 201. Without express terminology to this effect, we do not believe that this extends to permitting CIA to make such payments on a more favorable basis.

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6. The rule is well established in Government that increases in compensation lawfully may not be granted by administrative determination to have retroactive effect. 31 Comp. Gen. 163, 164; 28 id. 300; 25 id. 601. The Comptroller General made it abundantly clear in his opinion to the Director of Central Intelligence, cited above, that the unique authorities of this Agency were not intended to permit:

"a disregard of any control with respect to the normal administrative or operating problems which confront the ordinary Government agency.... To adopt the view suggested in your letter (that retroactive payments could be made under the broad authority of Section 10 of Public Law 110) would be equivalent to concluding that your Agency is authorized to grant retroactive increases, bonuses, or other perquisites to any or all of its employees with such frequency, or at such times, as desired, contingent only on the availability of funds. I cannot attribute any such intention to the Congress." 31 Comp. Gen. 191, 193.

To say that Public Law 375 and the decision of November 6, 1951 have no restrictive effect upon this Agency is tantamount to making the contention refuted by the Comptroller General in the quoted passage.

7. Furthermore, it is our opinion that the Comptroller General's decision of January 25, 1952 referred to in paragraph 4 of your memorandum, is clearly distinguishable on its facts. The case of the "de facto" officer there considered, involved an Army Air Force Captain who continued to receive the pay and allowances and perform the duties of a higher grade after his temporary promotion to that grade had expired. The question of retroactive increases in salary was not in issue. It cannot be said here that Agency employees promoted during the period of retroactivity performed the services of their promoted grade during that entire period.

8. For the reasons stated, payments in excess of those permitted under the Comptroller General's interpretation of Public Law 201 are retroactive payments not expressly authorized by law and hence are subject to audit exception. We therefore believe that it is necessary to require repayments of amounts considered as such overpayments. A revision of Agency policy purporting to waive this requirement would be legally objectionable.

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Office of the General Counsel

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2 Feb 53

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